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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

EMERYS JULIAN ALEXANDER,

Plaintiff,

Civil No. 10-6371-AA

v.

ORDER

DAVID ROBINSON, et al.,

Defendants.

AIKEN, District Judge.

Plaintiff filed a complaint alleging that he was battered, assaulted, physically and sexually abused, raped and sodomized by defendants. The abuse is alleged to have occurred "around the year 1978, give or take" when plaintiff was "approximately 7 years old." Complaint (2) p. 2.

Federal jurisdiction is invoked on the basis of diversity of citizenship under 28 U.S.C. § 1332.

Defendants have filed a motion to dismiss on the grounds of "lack of subject matter jurisdiction because there is not complete diversity. Motion to Dismiss (#12), p. 1.

In order to establish diversity jurisdiction under 28

U.S.C. § 1332(a)(1) the party invoking jurisdiction must demonstrate that all defendants are domiciled in states other than the state in which the plaintiff is domiciled. Lew v. Moss, 797 F.2d 747, (9th Cir. 1986); see also, Cook v. A VI Casino Enterprises, 548 F.3d 718, 722 (9th Cir. 2008). "A person is 'domiciled' in a location where he or she has established a 'fixed habitation or abode in a particular place, and [intends] to remain there permanently or indefinitely." Lew, supra, at 749-50.

Plaintiff is an inmate in the custody of the Oregon Department of Corrections and is incarcerated at the Oregon State Penitentiary in Salem, Oregon. Plaintiff alleges that "[d]efendant(s) reside in Florida." Complaint (#2) p. 1.

The Declaration of David Robinson (#21) indicates that he was served with process in this action at his "residence at 2690 NE Roberts, Gresham, Oregon." Robertson Declaration (#21) p. 1. The declaration further states:

3. I have an Oregon Drivers license and that the license reflects an Oregon address.

4. I have automobile insurance that reflects my Oregon address.

5. My motor vehicle is registered in Oregon.

6. I am registered to attend Mt. Hood Community College and I am paying in state tuition.

7. All of my personal property is in Oregon and I do not have any real or personal property in Florida or any other state.

8. I have a serious health condition and my health providers for that condition are in Oregon.

9. All of my bills are mailed to me in Oregon.

10. I have established bank accounts in Oregon and do not have any bank accounts in Florida.


11. I filed my 2009 and 2010 tax returns as an Oregon resident.

Declaration of David Robinson (#21), p. 2.

Based on defendant Robinson's sworn statement attesting to the above indicies of domicile, I find that he is a resident of and domiciled in the state of Oregon for purposes of diversity jurisdiction. Accordingly, there is a lack of complete diversity of citizenship and defendants' Motion to Dismiss (#12) is allowed. This proceeding is dismissed for lack of jurisdiction. The dismissal is without prejudice to plaintiff right to pursue his claims in state court.

IT IS SO ORDERED

DATED this 5 day of May, 2011.



Ann Aiken
United State District Judge